

IN PROCEEDINGS UNDER THIS ACT.—No person shall terminate the employment of, or in any other way discriminate against (or cause the termination of employment of or discrimination against), any employee or any authorized representative of employees by reason of the fact that the employee or representative—

(1) has filed, instituted, or caused to be filed or instituted any proceeding under this Act; or

(2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) APPLICATION FOR REVIEW; INVESTIGATION; HEARINGS; REVIEW.—

(1) IN GENERAL.—An employee or a representative of employees who believes that the termination of the employment of the employee has occurred, or that the employee has been discriminated against, as a result of the actions of any person in violation of subsection (a) may, not later than 30 days after the date on which the alleged violation occurred, apply to the Secretary of Labor for a review of the alleged termination of employment or discrimination.

(2) APPLICATION.—A copy of an application for review filed under paragraph (1) shall be sent to the respondent.

(3) INVESTIGATION.—

(A) IN GENERAL.—On receipt of an application for review under paragraph (1), the Secretary of Labor shall carry out an investigation of the complaint.

(B) REQUIREMENTS.—In carrying out this subsection, the Secretary of Labor shall—

(i) provide an opportunity for a public hearing at the request of any party to the review to enable the parties to present information relating to the alleged violation;

(ii) ensure that, at least 5 days before the date of the hearing, each party to the hearing is provided written notice of the time and place of the hearing; and

(iii) ensure that the hearing is on the record and subject to section 554 of title 5, United States Code.

(C) FINDINGS OF COMMANDANT.—On completion of an investigation under this paragraph, the Secretary of Labor shall—

(i) make findings of fact;

(ii) if the Secretary of Labor determines that a violation did occur, issue a decision, incorporating an order and the findings, requiring the person that committed the violation to take such action as is necessary to abate the violation, including the rehiring or reinstatement, with compensation, of an employee or representative of employees to the former position of the employee or representative; and

(iii) if the Secretary of Labor determines that there was no violation, issue an order denying the application.

(D) ORDER.—An order issued by the Secretary of Labor under subparagraph (C) shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

(c) COSTS AND EXPENSES.—In any case in which an order is issued under this section to abate a violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of the proceedings, shall be assessed against the person committing the violation.

(d) DELIBERATE VIOLATIONS BY EMPLOYEE ACTING WITHOUT DIRECTION FROM EMPLOYER OR AGENT.—This section shall not apply to any employee that, without direction from the employer of the employee (or agent of

the employer), deliberately violates any provision of this Act.

SEC. 8. JUDICIAL REVIEW.

(a) REVIEW OF ACTIONS BY ADMINISTRATOR OR COMMANDANT; SELECTION OF COURT; FEES.—

(1) REVIEW OF ACTIONS.—

(A) IN GENERAL.—Any interested person may petition for a review, in the United States circuit court for the circuit in which the person resides or transacts business directly affected by the action of which review is requested—

(i) of an action of the Commandant in promulgating any effluent limit under section 5; or

(ii) of an action of the Commandant in carrying out an inspection, sampling, or testing under section 6.

(B) DEADLINE FOR REVIEW.—A petition for review under subparagraph (A) shall be made—

(i) not later than 120 days after the date of promulgation of the limit or standard relating to the review sought; or

(ii) if the petition for review is based solely on grounds that arose after the date described in clause (i), as soon as practicable after that date.

(2) CIVIL AND CRIMINAL ENFORCEMENT PROCEEDINGS.—An action of the Commandant or Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(3) AWARD OF FEES.—In any judicial proceeding under this subsection, a court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party in any case in which the court determines such an award to be appropriate.

(b) ADDITIONAL EVIDENCE.—

(1) IN GENERAL.—In any judicial proceeding instituted under subsection (a) in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and demonstrates to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceeding before the Commandant or Administrator, the court may order the additional evidence (and evidence in rebuttal of the additional evidence) to be taken before the Commandant or Administrator, in such manner and on such terms and conditions as the court determines to be appropriate.

(2) MODIFICATION OF FINDINGS.—On admission of additional evidence under paragraph (1), the Commandant or Administrator—

(A) may modify findings of fact of the Commandant or Administrator, as the case may be, relating to a judicial proceeding, or make new findings of fact, by reason of the additional evidence so admitted; and

(B) shall file with the return of the additional evidence any modified or new findings, and any related recommendations, for the modification or setting aside of any original determinations of the Commandant or Administrator.

SEC. 9. ENFORCEMENT.

(a) IN GENERAL.—Any person that violates section 4 or any regulation promulgated under this Act may be assessed—

(1) a class I or class II penalty described in subsection (b); or

(2) a civil penalty in a civil action under subsection (c).

(b) AMOUNT OF ADMINISTRATIVE PENALTY.—

(1) CLASS I.—The amount of a class I civil penalty under subsection (a)(1) may not exceed—

(A) \$10,000 per violation; or

(B) \$25,000 in the aggregate, in the case of multiple violations.

(2) CLASS II.—The amount of a class II civil penalty under subsection (a)(1) may not exceed—

(A) \$10,000 per day for each day during which the violation continues; or

(B) \$125,000 in the aggregate, in the case of multiple violations.

(3) SEPARATE VIOLATIONS.—Each day on which a violation continues shall constitute a separate violation.

(4) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under subsection (a)(1), the Commandant or the court, as appropriate, shall consider—

(A) the seriousness of the violation;

(B) any economic benefit resulting from the violation;

(C) any history of violations;

(D) any good-faith efforts to comply with the applicable requirements;

(E) the economic impact of the penalty on the violator; and

(F) such other matters as justice may require.

(5) PROCEDURE FOR CLASS I PENALTY.—

(A) IN GENERAL.—Before assessing a civil penalty under this subsection, the Commandant shall provide to the person to be assessed the penalty—

(i) written notice of the proposal of the Commandant to assess the penalty; and

(ii) the opportunity to request, not later than 30 days after the date on which the notice is received by the person, a hearing on the proposed penalty.

(B) HEARING.—A hearing described in subparagraph (A)(ii)—

(i) shall not be subject to section 554 or 556 of title 5, United States Code; but

(ii) shall provide a reasonable opportunity to be heard and to present evidence.

(6) PROCEDURE FOR CLASS II PENALTY.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

(B) RULES.—The Commandant may promulgate rules for discovery procedures for hearings under this subsection.

(7) RIGHTS OF INTERESTED PERSONS.—

(A) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this subsection, the Commandant shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(B) PRESENTATION OF EVIDENCE.—

(i) IN GENERAL.—Any person that comments on a proposed assessment of a class II civil penalty under this subsection shall be given notice of—

(I) any hearing held under this subsection; and

(II) any order assessing the penalty.

(ii) HEARING.—In any hearing described in clause (i)(I), a person described in clause (i) shall have a reasonable opportunity to be heard and to present evidence.

(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—

(i) IN GENERAL.—If no hearing is held under subparagraph (B) before the date of issuance of an order assessing a class II civil penalty under this subsection, any person that commented on the proposed assessment may, not later than 30 days after the date of issuance of the order, petition the Commandant—

(I) to set aside the order; and

(II) to provide a hearing on the penalty.